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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

KEITH I. SCHORR, SUSAN SCHORR,
in their own right and as personal
representatives of the ESTATE OF
RYAN K. SCHORR,

Plaintiffs,

v.

BOROUGH OF LEMOYNE, et al.,

Defendants.

JURY TRIAL DEMANDED

HONORABLE YVETTE KANE

FILED
HARRISBURG, PA

FEB 07 2003

NO. 1:CV-01-0930

MARY E. D'ANDREA, CLERK
Per

PLAINTIFFS' REPLY BRIEF TO DEFENDANT WEST SHORE
REGIONAL POLICE COMMISSION'S BRIEF IN OPPOSITION TO
PLAINTIFFS' OBJECTIONS TO THE REPORT AND
RECOMMENDATION OF THE MAGISTRATE JUDGE

ARGUMENT

A. Plaintiffs' ADA Claim is not Limited to Arrests

This case cannot be analyzed under Hainze v. Richards, 207 F.3d 795 (5th Cir. 2000). The officers in this case were authorized under the Pennsylvania Mental Health Procedures Act to take Ryan Schorr to Holy Spirit Hospital for emergency treatment. This task is not limited to police officers. The county administrator may issue a warrant requiring a person authorized by him, or any peace officer, to take a person who is severely mentally disabled to an appropriate facility. See 50 P.S. §7302. These are situations where training on how to deal with

emotionally disturbed persons is critical, and where application of a rigid enforcement role is not necessary and, as here, often results in the use of lethal force.

Further, Hainze does not apply to all situations involving the police. Despite defendant's argument in Part B of its brief, it is clear from the Third Circuit's recent decision in Estate of Robert Cecil Smith, et al v. Trooper James Marasco, et al, No. 02-1437 (January 29, 2003), that the police may be liable when they overreact to a situation involving an emotionally disturbed person. While not an ADA or training case per se, the court in Smith recognized that where the police inappropriately assume a "rigid enforcement role", it may "aggravate and escalate the tenor of the situation", leading to unnecessary harm or death. Id.

Also, defendants reliance upon the Grand Jury Report is neither dispositive, nor admissible at this stage. The Grand Jury considered whether the officers committed any criminal wrongdoing, not whether their actions were the result of the deliberate failure of the defendant West Shore Regional Police Commission to train them properly to deal with emotionally disabled persons in an involuntary emergency treatment and examination situation. The Grand Jury only focused on the use of lethal force and not whether the events leading up to Ryan's death fell below acceptable standards for dealing with severally mentally disabled persons.

1. **Defendant had an Obligation to Evaluate Police Training**

If defendant would have complied with the ADA regulations, 28 C.F.R §35.105(a), they would have know that there was an urgent need for training.

This section requires that:

a public entity shall, within one year. . .
evaluate its current services,
policies, and practices, and the effects
thereof, that do not meet
the requirements of this part and, to the
extent modification of any
such services, policies, and practices is
required, the public entity
shall proceed to make the necessary
modifications.

To argue, as defendant does, that police departments have no such responsibility is contrary to the legislative history of the ADA which recognizes that discriminatory treatment by police departments can be avoided through proper training. 1990 U.S.C.C.A.N. at 473. It is also contrary to the case law already cited by plaintiffs which identifies police departments as public entities. See e.g., Jackson v. Town of Sanford, 1994 U.S. Dist.Ct. LEXIS 15367, *24 (recognizing applicability of Title II to police force).

2. **Totality of Circumstances**

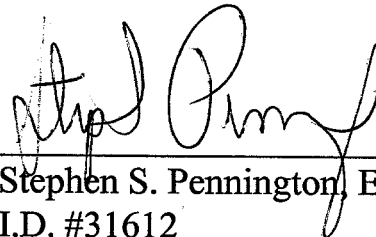
Plaintiffs' reference to the "totality of circumstances" is in response to

defendant's narrow view of this case. Defendant's liability is not based upon the conduct of the officers, but directly as a result of its failure to train, which in this case constitutes a constitutional violation.

CONCLUSION

For all of the above reasons, as well as those set forth in their objections to the Report and Recommendation of the Magistrate Judge, plaintiffs' request that this Court deny defendant's motion to dismiss their ADA claim against defendant Commission, and that the Report and Recommendation of the Magistrate Judge as to this claim be set aside.

Respectfully submitted,



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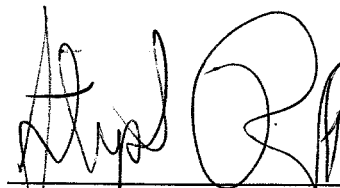
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I, STEPHEN S. PENNINGTON, hereby certify that on this date I served a true and correct copy of the foregoing Plaintiffs' Reply Brief to Defendant West Shore Regional Police Commission's Brief in Opposition to Plaintiffs' Objections to the Report and Recommendation of the Magistrate Judge addressed to the Court via overnight United Parcel Service and Defendants by U.S. first class mail, postage prepaid upon the following counsel:

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Dated: February 6, 2003